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Environmental Law

South Florida Water Management District v. Miccosukee Tribe of Indians et al. (Supreme Court of the United States – Decided March 23, 2004)

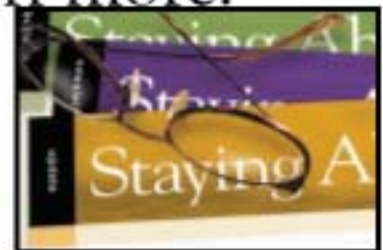
What happened?

On March 23, 2004, the U.S. Supreme Court handed down a decision that held that the federal Clean Water Act and its corresponding permitting requirements will apply to point sources that do not themselves generate pollutants.

What does it mean?

This significant decision held that to be covered by the federal NPDES permitting program, “a point source need not be the original source of the pollutant; it need only convey the pollutant to ‘navigable’ waters.”

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On March 23, 2004, the U.S. Supreme Court handed down a decision that held that the federal Clean Water Act and its corresponding permitting requirements will apply to point sources that do not themselves generate pollutants. *South Florida Water Management District v. Miccosukee Tribe of Indians*, No. 02-626 (March 23, 2004). This significant decision held that to be covered by the federal NPDES permitting program, “a point source need not be the original source of the pollutant; it need only convey the pollutant to ‘navigable waters.’” The Court remanded the case for a further determination regarding the government’s argument that all navigable waters of the United States should be viewed “unitarily” for purposes of NPDES permitting and that NPDES permits should *not* be “required when water from one navigable water body is discharged, unaltered, into another navigable water body.”

If the Court ultimately accepts the government’s argument, an NPDES permit will not be required for this particular project. Such a determination would signal a relaxation of the Clean Water Act’s NPDES permitting requirement. On the other hand, a decision in favor of the Tribe might result in a requirement for an NPDES permit for every engineered diversion from one navigable water into another, which could result in the need for thousands of additional NPDES permits.

The case involved a pump station that transferred water from a canal into a reservoir within an Everglades water management area. The South Florida Water Management District and United States argued that the man-made canal and reservoir were two hydrologically indistinguishable parts of a single water body. They argued that pumping water from one segment to another was not an “addition” of pollutants covered by the permitting requirements of the Clean Water Act. The District and United States asserted that any pollution concerns should be addressed through local nonpoint source pollution programs. The Tribe countered this argument by asserting the existence of two distinct water bodies which it argued invoked the requirement of obtaining an NPDES permit.

The Supreme Court did not decide the issue of whether the bodies of water were meaningfully distinct water bodies as the factual record was inadequately developed in the lower courts. The Court did point out, however, that the “unitary waters” argument, advanced by the government and the District may conflict in certain ways with existing NPDES provisions and cited a number of examples where water quality standards are set and NPDES permits are required for water taken from and discharged to the same water body. The Court further noted that the Commonwealth of Pennsylvania has interpreted the Clean Water Act to cover interbasin water transfers. On remand, the United States will need to explain how these “unitary waters” may also be designated as distinct water bodies for certain regulatory purposes.

The Supreme Court’s determination was virtually unanimous. Justice Scalia concurred in part and dissented in part, asserting that he would not have addressed the “unitary waters” argument in this case because it was not raised in or decided by the Court of Appeals.

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